PETITION NOT PRINTED

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1960

No. 116

STUART W. NEWSOM, PETITIONER,

vs.

W. FRANK SMYTH, JR.,
Superintendent of Virginia State Penitentiary.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF APPEALS OF THE COMMONWEALTH OF VIRGINIA

PETITION FOR CERTIORARI FILED NOVEMBER 3, 1959.
CERTIORARI GRANTED MAY 31, 1960.

Supreme Court of the United States

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INDEX

	Original	Print
Record from the Law and Equity Court of the City of Richmond, Commonwealth of Virginia		
Affidavit of poverty	1	1
Petition for writ of habeas corpus ad subjiciendum	2	2
Brief in support of contentions	6	6
Minute entries of trial, verdict and sentence in the Hustings Court of the City of Richmond, Part II	11	11
Exhibit "C" to brief—Letter dated April 18, 1953 from petitioner to Honorable M. Ray Doubles, Hustings Court, Part II, purportedly noting appeal	13	13
Exhibit "D" to brief—Letter dated April 23, 1953 from petitioner to Honorable Ray Doubles, Hustings Court, Part II, requesting appointment of counsel	14	14

	Original	Print
Letter dated January 12, 1959 from Assistant Attorney General Miller to Judge Rives of the Law and Equity Court opposing petition for writ of habeas corpus	15	15
Letter dated January 15, 1959 from petitioner to Judge Rives of the Law and Equity Court replying to opposition of Assistant Attorney General	16	16
Letter dated January 29, 1959, from Judge Young to petitioner advising of the appointment of counsel	18	18
Order appointing counsel	19	19
Letter dated January 29, 1959 from Judge Young to Edward W. Simpkins, Jr., re his appointment as counsel and discussion of case	20	20
Order denying petition for writ of habeas corpus	22	22
Memorandum opinion	23	23
Notice of appeal	33	32
Assignment of error	34	33
Proceedings in the Supreme Court of Appeals of the Commonwealth of Virginia	40	36
Order refusing petition for writ of error	40	36
Clerk's certificate (omitted in printing)	42	36
Order granting motion for leave to proceed in forma pauperis and granting petition for writ of certiorari	43	37

[fol. 1]

IN THE LAW AND EQUITY COURT OF THE CITY OF RICHMOND, VIRGINIA

STUART W. NEWSOM, PETITIONER, PRO SE

VS.

W. FRANK SMYTH, JR., SUPT., RESPONDENT

AFFIDAVIT OF POVERTY

Stuart W. Newsom, the petitioner in the forthcoming petition personally appeared before me, Hugh L. Johnson, a Notary Public in and for the City of Richmond and the State of Virginia, and first being duly sworn according to law, deposes and says that he is without funds and cannot obtain funds with which to prosecute his cause. Therefore, because of his poverty he is unable to pay the fees and costs of the proceedings contemplated, nor can he give security therefore.

And he further says that he is petitioning in good faith for remedy, and that he believes he is lawfully entitled to the redress he seeks, and that he prays leave to proceed in "forma pauperis" in accordance with the statute providing for indigent's, suits; And he also prays for the appointment of an Attorney at Law to represent his cause before this Honorable Court.

And on this day below he has less than the sum of $25.92, in his spending account at the Penitentiary of Virginia; [init] HLJ

Notary's checked thereupon.

/s/ Stewart W. Newsom
STUART W. NEWSOM,
Petitioner & Affiant

Taken, sworn to and subscribed before me, in my City aforesaid in the Commonwealth of Virginia, and given under my hand and seal this 9 day of Jan. 1959.

My commission expires on the 16 day of August 1960.

/s/ Hugh L. Johnson
Notary Public
(SEAL)

[fo. 2] (File Endorsement Omitted)

IN THE
LAW AND EQUITY COURT OF THE
CITY OF RICHMOND

STUART W. NEWSOM, PETITIONER

vs.

W. FRANK SMYTH, JR., Supt., Virginia State Penitentiary,
RESPONDENT

PETITION FOR THE WRIT OF HABEAS CORPUS AD SUBJICIENDUM—Filed Jan. 12, 1959

TO: THE HONORABLE JOHN HICKS RIVES, JR., Judge of the aforesaid COURT:

On this 9 day of January 1959, by mail, COMES your aggrieved petitioner, Stuart W. Newsom, hereinafter referred as petitioner, and respectfully presents, in his own proper person, his petition for the extraordinary legal remedy provided for by statute and the Constitution of Virginia, and your petitioner states and avers in humble complaint that he is illegally confined and restrained of his liberty and held in detention by the Respondent thereof; who by virtue of his office and appointment by the executive authority is the Superintendent of the aforesaid penal institution of Virginia.

The void color of authority in law by which your petitioner is unlawfully restrained, detained and held imprisoned in the Penitentiary of Virginia, exist a denial of an Appeal, from a final judgment and Conviction, which was held in the Hustings Pt. #II, Court of the City of Richmond; and the said denial is in violation of your petitioner's right to Due Process of Law. Petitioner had been sentenced to life in the Penitentiary, of this Commonwealth, which is Null and Void ad initio, due to the deprivation and the invasion of your petitioner's Constitutional Rights; whereas, the said Constitutional Rights were guaranteed to your petitioner by the Constitutional of Virginia, Art. 1, Section 8.

STATEMENT OF FACTS

On the 14th day of June, 1952, petitioner was arrested [fol. 3] upon warrant charging Murder, or to the effect, in the City of Richmond.

On or about the 14th day of July, 1952, an indictment was returned to the Husting Court of the City of Richmond, Part II.

The 10th day of April, 1953, defendant refused to plea, and therefore a "Not Guilty" plea was entered by the Court, on his behalf; whereas, on the same day placed on trial, and found guilty, by an undirect verdict by jury, whereas fixing sentence, which was thereafter imposed; Life in the Penitentiary, imposer, the Honorable M. Ray Doubles.

CASE HISTORY

In this case, your petitioner have filed a petition, named Writ of Habeas; But in that said petition, he have not at any time, contended the forthcoming contention.

The first petition was filed in the Hustings Court Part one, in the City of Richmond, and thereafter appeal to the Supreme Court of Appeals, Richmond, Virginia; thereafter proceeding to the United States Supreme and into the U. S. District Court for the Eastern District of Virginia, Norfolk Division; and Richmond, Virginia and the U. S. Court of Appeals, for the Fourth Circuit. And the said petition is now, or as to the date of this petition, pending in United States Supreme Court, Washington, 25, D. C.

Please take notice, that this forthcoming petition *which is* being execued, have not contended in any way, the forthcoming contention.

* * * * *

The United States Constitution Art 1, Sec 9 provides: "The privilege of the writ of habeas corpus shall not be supended, unless when in cases or rebellion or invasion of the public safety may require it."

"Section 5848 of the Code of Virginia; Sup., Sec. 8-596

"The writ of habeas Corpus shall be granted forthwith by any Circuit Court or Corporation court, or

any judge of either in vacation, to any person who shall apply for the same by petition, showing by [fol. 4] affidavits or other evidence probable cause to believe that he is detained without lawful authority. Such petition shall enumerate any and all perevious applications of like nature and their disposition.

The aforesaid, section, is subject to the provisions of Section 17-97 of the Code of Virginia only (1) the circuit court or corporation court or any judge of either in vacation of the court or *city in which the petitioner is detained* (2) the court or any judge thereof in vacation which entered the original judgment order of conviction or convictions complained in the petition shall have authority to issue writs of habeas corpus (Code 1919, Section 5848 Acts, c. 215).

In Ex Parte Rulling, 80, Va., at page 316, the Supreme Court of Virginia, speaking through Justice P. Lewis, said:

"It is well established and undisputed principle that mere errors in proceedings of a Court of competent jurisdiction cannot be reviewed on habeas corpus. In such cases the remedy if any is by writ of error or appeal, BUT WHERE THE PROCEEDINGS UNDER WHICH THE PARTY COMPLAINING IS DETAINED IN CUSTODY ARE VOID, AS WHERE THE COURT IS WITHOUT JUURISDICTION, AND THE SAME *ARE REVIEWABLE ON HABEAS CORPUS* AND THE WILL BE DISCHARGED."

CONTENTIONS

#1. Petitioner was denied Due Process of law and Equal Protection when the Hustings Court Part Two, of the City of Richmond, denied him an Appeal from its judgment render on the 10th day of April 1953, and in that, failing to aid sufficiently the intended appeals of the Appellant. See Exhibit "C" and "D", annexed hereto.

CONCLUSION

Your petitioner avers that by and for the aforesaid reasons, he has shown this Honorable Court probable cause to issue a writ of habeas corpus upon the said, W. Frank Smyth, Jr., Supt., of the Virginia, State Penitentiary, at 500 Spring Street, commanding him to have the body of your petitioner before this Honorable Court at the place and times so specified therein, and for said [fol. 5] Superintendent to show cause why the Den.. of an Appeal is not dening the pefitioner his Constitutional Rights; under the Constitution of Virginia, Art. 1., Section 8, clause therein; and why the sentence in which your petitioner is now serving, should not be discharged.

In duty bound, your petitioner forever pray etc.

Et inde petit judicium.

Respectfully Submitted by:

/s/ Stewart W. Newsom
STUART W. NEWSOM,
Petitioner

Duly Sworn to by Petitioner. Jurat Omitted in Printing.

[fol. 6] IN THE
LAW AND EQUITY COURT OF THE
CITY OF RICHMOND

(Title Omitted)

BRIEF IN SUPPORT OF CONTENTIONS

TO: THE HONORABLE JOHN HICKS RIVES, JR., Judge of the aforesaid

Your petitioner, Stuart W. Newsom, heretofore referred to as your petitioner, shall respectfully present and show by authorities, opinions and duly certified exhibits that he has been "Denied Due Process and Equal Protection of law and because of same his sentence in which he is now serving, is null and void. See Smyth, V. Holland, 199 Va. 92 S. E. (2d) 745

• • • •

#1B. Your petitioner was denied Due Process of law and Equal Protection, when the Hustings Court, Part Two, of the City of Richmond, denied him an Appeal from its judgment rendered on the 10th day of April 1953, and in that, failing to aid sufficiently the intended appeals of the Appellant. See Exhibit "C", annexed hereto.

Your petitioner gave notice to the Honorable M. Ray Doubles, Judge of the Hustings Court Part II, on the 18th day of April, 1953, that he desired an Appeal; See Exhibit "C", and was doing all in his power to meet the requirements. But never receive any notification from the aforesaid, Judge, or from any parts of his Court.

On the 23rd day of April 1953, your petitioner again wrote the aforesaid, Judge, to the following effect: In part thereof, quote:

> ". . . Due to circumstances beyond my controal, I have been unable to complete arrangements with an attorney to complete my appeal.
>
> Therefore, I respectfully request that you appoint me counsel to appeal my case to the State Supreme Court of Appeals.

Petitioner never did receive a reply in any form, whatsoever.

Petitioner respectfully submit Constitutional Obligation No. 3., under Canons of Judicial Ethics.

[fol. 7] "It is the duty of all judges in the United States to support the federal Constitution and that of the state whose laws they administer; in so doing, they should fearlessly observe and apply *fundamental limitations and guaranttees.*

And it is said under Ancient Precedents:

"Ye shall not respect persons in judgment; but ye shall hear the samall as well as the great; ye shall not be afraid of the face of man; for the judgment is God's; and the cause that is too hard for you, bring it unto me, and I wil hear it".—Deuteronomy 1, 16-17

Your petitioner aver and plead hat the denials of his Constitutional Rights are patently obvious, and that due to the unfairness and partiality of the Judge directly concerned with the issuance thereof, the records are invalidated and Null and Void, and your petitioner are entitled to remedy in that he were grossly denied an Appeal, which is guaranteed him, and that such denial of his rights was in order to imprison him in the State Penitentiary, in wilful disregard to the Constitution of Virginia, Art. 1. Sec. 8, clause therein, and the United States Federal Constitution, Amendment Fourteen, clause therein.

It is plainly states in the Virginia Constitution Art 1, Sec., 8,—Cite in part thereof:

". . . Laws may be enacted providing for the trial of offenses not felonious by justice of the peace or other inferior tribunal without a jury, preserving the accused to an appeal to and a trial by jury in some court of record having original criminal jurisdiction."

. . .

And Section 18-12 Code, 1950) Va., submit in part thereof:

". . . A person from whom such recognizance is required may appeal to the circuit court of the county

> or corporation court of the corporation, and, in such case, the officer from whose judgment the appeal is taken shall recognize such of the witnesses . . ."

In the case of Read v. Com., 24 Gratt. (65 Va.) 618.— Petitioner shall respectfully cite:

> [fol. 8] "Right of appeal is absolute.—Where a justice of the peace requires surety of the peace of any person, such person has an *absolute right of appeal to the circuit court* of the county or the corporation court of the corporation. In the court the case is to be heard de novo upon the evidence.

It can not be said that your petitioner did not give notice in time, whereas, exhibit "C" and "D", would show contrary to the effect. In support of same, petitioner point to: V #6252 and Rule 21 of the Supreme Court of Appeals, whereas it: "require that reasonable notice be given appellee that a certificate of exceptions will be presented so that appelle can look over the certificate and given an opportunity to make known any objections he may have thereto. It was held the case of * * * 52 S.E. 2d 164, 189 Va. 248: "While the notice was indeed short it was the best the attorney for the accused could do under the circumstances; appelle's attorney attorney accepted the notice and actually appeared; and the trial judge certified that reasonable notice had been given. Hence it was sufficient notice."

In section 19-254 Code (1950) Va., I quote: "If a person sentenced by a circuit or corporation court to death or confinement in the penitentiary asks for time to apply for a writ of error, the court shall postpone the execution of its sentence for such time as it may deem proper."

"In any other criminal case wherein judgment is given by *any court and in any case of judgment* for a contempt, to which a writ of error lies, the court giving such judgment may postpone the execution thereof for such time and on such terms as it deems proper. . . ." A writ of error from the Supreme Court of Appeals shall lie to any such judgment refusing bail or requiring excessive bail."

In the case of Ramey v. Com., 145 Va. 848, 133 S. E. 755. It was held:

> "To refuse to suspend a judgment of imprisonment *is a denial of the right* to a writ of error conferred by statute. This the trial court has no right to do."

[fol. 9] The law makes essential in proceedings involving the DEPRIVATION OF LIFE OR LIBERTY, cannot be dispensed with or affected by the consent of the accused much less by his mere failure when on trial and in custody, to object to unauthorized methods; and as it is plainly said, in the case of Corrigan V. Buckley, 1926, 271 U. S. 323, 330, 331, 46 S. Ct. 521, 523, 524, 70 L. Ed 968, Cite in part thereof:

> ". . . No State Shall enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall an State DEPRIVE ANY PERSON, OF LIFE, LIBERTY, OR property, WITHOUT DUE PROCESS OF LAW; nor DENY TO ANY PERSON within its jurisdiction the EQUAL PROTECTION, of the law."

Your petitioner was denied an Appeal, from the judgment which was rendered and imposed on him, on the 10th day of April, 1953, whereas, in that, he was deprived and denied the Due Process of law and the Equal Protection of the law, which is guaranteed by the Constitutional of Virginia, and the Fourtheen Amendment of the Constitution of the United States.

The fundamental issues which this Court is being call upon respectfully to consider. Where, however, it is clear that the action of the State violates the terms of the Fundamental Charter, it is the obligation of this Court so to declare.; whereupon this issue is regard to a denial of an Appeal, which arise though prejudice. And upon same your petitioner has been denied and deprived of Due Process of Law and privileges; immunities of citizen thereof.

CONCLUSION

In conclusion, your petitioner respectfully submits that for reasons shown in the foregoing petition, and the brief

herein and those reasons that may be shown by counsel, which may be allowed and appointed by this Honorable Court to defend the rights of the defendant, to further show he is unlawfully restrained and detained in prison, and by virtue of void processes of law; and that his cause is such a one as is proper to be brought before this Honorable Court on habeas corpus proceeding; and that [fol. 10] the writ will lie for all time to test the illegality of his present inprisonment.

For the aforesaid reasons has shown this Court probable cause to issue a writ of habeas corpus upon the said, W. Frank Smyth, Jr., Supt. of the Virginia State Penitentiary, at 500 Spring Street, commanding him to have the body of your petitioner before this Honorable Court, and place to be specified therein, together with the true cause of his detention, if any there be and to do what then and there sahll be considered concerning your petitioner, and to make return on that day specified therein why the conviction of your petitioner should not be adjudge nulities under the ture law of the land, and Petitioner pray for same.

In duty bound I forever pray etc. . . .

Respectfully Submitted by:

/s/ Stewart W. Newsom
STUART W. NEWSOM,
Petitioner

• • • •

Duly Sworn to by Petitioner. Jurat Omitted in Printing.

[fol. 11] IN THE
HUSTINGS COURT OF THE CITY OF RICHMOND,
PART II,

The 10th Day of April 1953.

COMMONWEALTH OF VIRGINIA, PLAINTIFF

against

STUART W. NEWSOM (W), DEFENDANT

Indictment for a Felony, No. 1

MINUTE ENTRIES OF TRIAL, VERDICT AND SENTENCE

Stuart W. Newsom (w), who stands charged with a felony, to-wit: That on the 14th day of June, 1952, he did feloniously kill and murder one James F. Brown, was this day led to the bar in the custody of the Sergeant of the City of Richmond, and also came Percy S. Smith, his attorney. The defendant, being arraigned of said offense, refused to plead. Whereupon, the Court entered a plea of not guilty on behalf of the defendant.

Whereupon, the Sergeant, having returned the Venires Facias, drawn in the manner prescribed by law, and of the number so summoned and attending, a panel of twenty names, free from exceptions for the trial of the defendant was made up and completed. And the Assistant Attorney for the Commonwealth and the attorney for the defendant, having alternately, beginning with the Assistant Attorney for the Commonwealth, each struck from the said panel, the names of four of the said jurors, the remaining twelve constituted the jury for the trial of the defendant, to-wit: Leon Adkins, Fred S. Brummer, Linwood W. Cobb, Robert H. Harvey, James M. Cary, Walker S. Smith, Rudolph C. Hassell, Harry Sachs, William G. Smith, George W. Mayo and Chas. H. Tate, who were sworn the truth of an upon the premises to speak, and having fully heard the evidence, the instructions of the Court, and arguments of counsel, were sent to their room in the custody of the City Sergeant to consult of their verdict,

and after some time returned into Court with a verdict as follows: "We the jury on the issues joined find the defendant guilty of murder in the first degree as charged in the indictment and fix his punishment at life imprisonment in the penitentiary."

[fol. 12] Whereupon, counsel for the defendant moved the Court to set aside the verdict but gave no grounds in support of his motion. Whereupon, the Court overruled the defendant's motion and the defendant by counsel excepted to the Court's ruling.

Whereupon, it being demanded of the said Stuart W. Newsom, if anything for himself he knew or had to say why the Court should not now proceed to pronounce judgment against him according to law, the said defendant arose and stated to the Court that he should not be sentenced as his attorney had failed to introduce certain evidence on his behalf and asked that he be given ten days within which to produce such evidence, which request the Court denied and to which ruling the defendant objected and excepted. Whereupon, it is ordered by the Court that the said Stuart W. Newsom be confined in the penitentiary for and during his natural life, this being the period by the jurors ascertained.

It is ordered that the Sergeant of the City of Richmond, when required so to do, deliver the said Stuart W. Newsom from the jail of this City to the Superintendent of the Penitentiary, in said Penitentiary to be confined and treated in the manner prescribed by law.

It is further ordered by the Court that the Commonwealth do recover of the said Stuart W. Newsom her costs incident to this proceeding.

Whereupon, the said defendant was remanded to jail.

Enter:

4/10/53

/s/ M. R. D.

Entered O. B. 34 Page 479

[fol. 13] EXHIBIT "C" TO BRIEF

500 Spring Street
Richmond 19, Virginia
April 18, 1953

Honorable M. Ray Doubles
Hustings Court Part II
Richmond 24, Virginia

Your Honor:

In lue of any known action on the part of my attorney, I am taking this method of respectfully noting an appeal from the 'life sentence' imposed upon me in your Court on April 10, 1953.

I will within the alloted time attempt to get Counsel to complete the appeal.

Respectfully yours,

/s/ Stuart W. Newsom
#63646

[fol. 14] EXHIBIT "D" TO BRIEF

500 Spring Street
April 23, 1953

Honorable Mr. Ray Doubles
Hustings Court Part II
Richmond, Va.

Your Honor:

Due to circumstances beyond my control, I have been unable to complete arrangements with an attorney to complete my appeal.

Therefore, I respectfully request that you appoint me counsel to appeal my case to the State Supreme Court of Appeals.

Respectfully yours,

/s/ Stuart W. Newsom
#63646

[fol. 15] COMMONWEALTH OF VIRGINIA

[SEAL]

Office of the Attorney General
Richmond

January 12, 1959

Honorable John H. Rives, Jr., Judge
Law and Equity Court
City Hall
Richmond 19, Virginia

Re: Stuart (Stewart) W. Newson
v.
W. Frank Smyth, Jr., Superintendent
of the Virginia State Penitentiary

Dear Judge Rives:

In response to a copy of a petition for a writ of habeas corpus addressed to your court in the above matter, this is to advise that the entire matter, involving the legality of the petitioner's detention, has been previously determined in habeas corpus proceedings in the State and Federal courts. Accordingly, habeas corpus does not lie in the State trial courts to further contest the validity of the detention.

Moreover, habeas corpus does not lie pursuant to Section 8-605, Code of Virginia, rendering such previous judgment conclusive. In addition, the petitioner has failed to set forth a list of such prior proceedings, as required.

Very truly yours,

/s/ T. M. Miller
THOMAS M. MILLER
Assistant Attorney General

TMM:MVH
cc: Mr. Stewart W. Newsom

[fol. 16]

500 Spring Street
Richmond 19, Virginia

January 15, 1959

Honorable John H. Rives, Jr., Judge
Law And Equity Court
City Hall
Richmond 19, Virginia

Re: Stuart W. Newsom
v.
W. Frank Smyth, Jr., Supt.
Of Virginia State Penitentiary

Dear Sir:

Received a copy of a letter to you, dated January 12, 1959, from the Attorney General, Mr. T. M. Miller.

The said, Attorney General, have erred; when stated: ". . .

> the entire matter, involving the legality of the petition's detention has been previously determinded in habeas corpus proceedings, in States and Federal Courts" . . .

Your Honor, it plainly shows, that the aforesaid, before reading the petition, made is conclusion. Whereas, on page three (3) of the petition for Writ of Habeas, under CONTENTION, number one (1), shows in regard to depravation of an Appeal, and nothing more. NOWHERE, in any other petition, in this petition's name, will you find any such contention, or anything to the effect, respective.

Whereas, in the said letter, and last paragraph, in referent to Section 8-605, Code of Virginia; whereas the said Section 8-605, states:

> "Any such judgment entered of record shall be conclusive, unless the same be reversed, except that the petitioner shall not be precluded *from bringing the same matter in question in an action for false imprisonment.*" (Code 1919, § 5857.)

Your petitioner has not act contrary to the above said, and the petition which is pending in your Court will stand upon it's face."

[fol. 17], He also states, that the petition: ". . . has failed to set forth a list of such prior proceedings as *required*,

This again plainly shows that our Honorable Attorney Gëreral, has made a great error, and therefore, shows and prove, that he has failed to read the petition, in regard to the proceedings. On page two (2) under Title, CASE HISTORY and page three (3), you will find each proceedings, respective, and the Section of law which govern same: Section 5848, of the Code of Va., Sup. Sec. 8.596, which the Attorney General referred: ". . . as required".

Your petitioner has submitted the facts, and therefore, PROTEST to the letter which shows upon it's face, in conjuction with the petition, to prove the said letter is in great error, and is liking of merits

Petition pray that this Honorable Court, take conducive, whereas, your petitioner is a layman.

In duty bound I forever pray etc, . . .

Respectfully yours,

/s/ Stewart W. Newsom
STUART W. NEWSOM,
Petitioner

[fol. 18] January 29, 1959

Mr. Stuart W. Newsom
No. 63646
500 Spring Street
Richmond 19, Virginia

In re: Petition of Stuart W. Newsom for writ of Habeas Corpus.

My dear Mr. Newsom:

Your petition for habeas corpus, dated January 9, 1959, was assigned to me as one of the judges of this Court in the routine distribution of business.

As presently advised your petition presents some questions which have not yet been settled by decision of the highest court of this State.

From time to time since receiving your petition I have been examining the authorities bear-on the questions presented. Since you have requested that counsel be assigned to you oin this matter and since the questions presented are somewhat difficult, I have, with his consent, this day appointed Mr. Edward B. Simpkins, Jr., an attorney of this City, and who is well versed in matters of this kind to represent you in this matter.

Mr. Simpkins advises that he will contact you at the Penitentiary one day next week.

Yours very truly,

/s/ Robert Lewis Young,
Judge

RLY/e

[fol. 19] IN THE
LAW AND EQUITY COURT OF THE
CITY OF RICHMOND

STUART W. NEWSOM, PETITIONER

against

W. FRANK SMYTH, JR., Superintendent of the Virginia State Penitentiary, RESPONDENT

ORDER APPOINTING COUNSEL—Jan. 29, 1959

The petitioner having prayed in his petition that an attorney at law be assigned to represent him in this cause, the Court doth appoint, with his consent, Edward P. Simpkins, Jr., Esquire, of the Richmond Bar, an attorney at law to represent the petitioner in this proceeding.

Enter

[init] R. L. Y.

Jan. 29, 1959

[fol. 20] January 29, 1959

Edward P. Simpkins, Jr., Esq.,
Attorney at Law
State-Planters Bank Building
Richmond, Virginia

In re: *Petition of Stuart W. Newsom for writ of Habeas Corpus.*

Dear Mr. Simpkins:

I enclose copy of order this day entered in the above entitled matter and copy of letter this day sent to Mr. Newsom. As presently advised, Mr. Newsom's petition complains of the following things:

First, that execution of the sentence was not suspended on his application, in which connection refers to Code Section 19-254 and the decided case of *Rainey* v. *Commonwealth*, 145 Va. 848.

Second, that eight days after the judgment he wrote to the Judge noting an appeal and advising that he proposed to get counsel of his own choice, but that thirteen days after the judgment he again wrote to the Judge advising that he was unable to get an attorney of his own choice and requesting that the Judge of the Court wherein he was convicted appoint counsel for him, which was not done.

As you know, Code Section 19-214.1 (Acts 1952, chap. 348) was the only statutory provision relating to the appointment of counsel in our Code at the time of Mr. Newsom's conviction in 1953. *Watkins* v. *The Commonwealth*, 174 Va. 518, and the several cases following it seem to settle the proposition that the Sixth Amendment to the Constitution of the United States does not apply to state court prosecutions, but that the right to counsel at least during the course of the original trial is guaranteed by Section 8 of the Constitution of Virginia, and the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States.

[fol. 21] It also seems to be settled that the Sixth Amendment to the Constitution of the United States in giving the right to "assistance of counsel" refers to the court of original jurisdiction only and that trial and the duty to furnish counsel ends with the sentence.

Federal Digest, Criminal Law, Section 641 (1-) g, you will find the state court cases digested in the National Digest under Criminal Law, 641 (f) j. A very recent case factually in point here and squarely holding that there is no duty to appoint counsel in connection with a proposed appeal is that of *State* v. *Fisher*, 300 SW 2d, 927. On the other hand, in a recent Indiana case the contrary was held. *State* v. *Youngblood*, 75 NE 2d, 551.

Most important, to m mind, is to ascertain the meaning and effect of the recent case of *Chessman* v. *Teets*, 354 U. S. 156, in which it was held that a denial to a convicted felon of an opportunity to participate in the preparation of the record for appeal in the state court constituted a violation of the due process clause of the Fourteen Amendment to the Constitution of the United States.

Thank you most sincerely for being willing to undertake this somewhat troublesome matter.

Yours very truly,

/s/ Robert Lewis Young,
Judge

RLY/e

[fol. 23] IN THE
LAW AND EQUITY COURT OF THE
CITY OF RICHMOND

Habeas Corpus

STUART W. NEWSOM, PETITIONER

against

W. FRANK SMYTH, JR., Superintendent of the Virginia State Penitentiary, RESPONDENT

ORDER DENYING PETITION FOR WRIT OF HABEAS CORPUS—
June 3, 1959

The Court, having fully considered the petition herein, and exhibits therewith, and the argument of counsel for the petitioner, appointed with his consent by the court, and having maturely considered of its decision to be rendered thereon, finds no probable cause to believe that petitioner is detained without lawful authority. Therefore, it is ordered that the writ of habeas corpus herein prayed for be denied, to which action of the court the petitioner, by counsel, excepted.

And the services of Edward P. Simpkins, Jr., Esquire, contemplated by the order herein of the 29th day of January, 1959, having been fully and ably performed, the Court doth discharge him from any further responsibility in this matter, with sincere appreciation.

[fol. 23]

IN THE
LAW AND EQUITY COURT OF THE
CITY OF RICHMOND

STUART W. NEWSOM, PETITIONER

against

W. FRANK SMYTH, JR., Superintendent, etc.,
RESPONDENT

MEMORANDUM OPINION

In this proceeding the petitioner seeks a writ of habeas corpus, alleging in his petition that he was denied due process of law and equal protection of law in that the trial court "denied" him an appeal and failed to "aid sufficiently" a proposed appeal. The facts recited, which must be accepted as true in ascertaining whether probable cause has been shown, are to the effect that shortly after conviction petitioner made known his desire to petition the Supreme Court of Appeals of Virginia for a writ of error and requested the trial court to appoint an attorney to handle the matter, which was not done.

In the argument reference is made to Section 19-254, Code of Virginia, 1950, and to the case of *Ranieu* v. *Commonwealth*, 145 Va. 848, which deal with the postponing of the execution of sentence of persons desiring to seek a writ of error. In the petitioner's case this would have meant remaining in jail instead of being transported to the penitentiary. However, the record appended to the petition fails to disclose that a request for suspension was made.

The question presented appears to be a novel one, both under the laws of this Commonwealth and under the Federal Constitution. Without determining whether petitioner was entitled to counsel in this proceeding, this court [fol. 24] has been fortunate in having petitioner's contention most exhaustively studied and presented by an attorney of the highest qualifications.

At the time of petitioner's trial and conviction, which occurred on April 10, 1953, it was provided by statute

as follows (Acts of Assembly, 1952, Chapt. 348; now Code Sec. 19-214.1):

> "In any case in which a person is charged with a felony and is not represented by counsel, the court, before accepting the plea of such person, shall by order entered of record appoint an attorney at law to represent him."

Before 1940 we had no statutes specifically dealing with the trial court's right or duty to appoint counsel in felony cases. That year an Act was passed requiring counsel in cases where the accused desired to plead not guilty and waive jury trial. Acts of Assembly, 1940, Chapt. 218. In 1948, by the last paragraph of Section 53-278.1 of the Reorganization Provisions of the Code of Virginia, it was enacted that in any case in which any person was charged with a felony and was not represented by counsel, the court, before accepting the plea of such person, should ascertain whether he desired counsel, and if so, and such person being unable to secure counsel of his own choosing, should appoint an attorney at law to represent him. This provision was incorporated into the Code of 1950 as Section 19-214.1, and remained the law until superseded by the Act of 1952, as quoted above.

It will be observed that all of the statutes cited deal with the appointment of counsel in connection with the proceedings in the trial court only.

At the time of petitioner's conviction Section 14-180, Code of Virginia, 1950, to the effect that any "person, who, on account of his poverty is unable to pay fees or costs may be allowed by a court to sue or defend a suit therein, without paying fees or costs; whereupon he shall [fol. 25] have from any counsel whom the court may assign him, and from all officers, all needful services and process, without any fees to them therefor . . .", was in force. But this section of the Code has been held not applicable to appellate proceedings. *Tyler* v. *Garrison*, 120 Va. 697.

Section 14-181, Code of Virginia, 1950, relating to compensation of attorneys appointed to defend poor persons, is also concerned with proceedings before trial courts.

where the poor person is charged with an offense, not poor persons convicted of an offense who may desire to petition the Supreme Court of Appeals of Virginia for a writ of error.

Under Section 19-262, Code of Virginia, 1950, on affidavit and the certificate of the trial judge, petitioner could have been relieved of certain printing costs, but, again, there is nothing in this provision of the Code which gave to petitioner any statutory right to the assistance of counsel in connection with his proposed plan to seek a writ of error.

In *Barnes' Case*, 92 Va. 794, at p. 803, again referring to the proceedings in a trial court, it was said as follows:

> "If a prisoner is unable to employ counsel, the court may appoint some one to defend him, and it is a duty which counsel owes to his profession, to the court engaged in the trial, to the administration of justice, and to humanity, not to withhold his aid, nor spare his best efforts in the defence of one who has the double misfortune to be stricken with poverty and accused of crime. No one is at liberty to decline such an appointment, and few, it is to be hoped, would be disposed to do so.' Cooley's Const. Lim. 406."

In *Watkins v. Commonwealth*, 174 Va. 518, at p. 522, still again referring to proceedings in trial courts, Mr. Justice Eggleston (now Chief Justice) said as follows:

> "While there is no specific provision in the Constitution of Virginia guaranteeing to persons accused of crime the right to have the assistance of counsel,' in *Barnes v. Commonwealth*, 92 Va. 794, 803, 23 S. E. 784, this court recognized the right to be a fundamental one. It is, we think, one of the rights [fol. 26] guaranteed to an accused under our Bill of Rights. Virginia Constitution, section 8.
>
> "It is well settled that courts of record having criminal jurisdiction possess the inherent authority, independent of statute, to appoint counsel to defend paupers and other indigent persons charged with crime."

On the other hand, in this jurisdiction the inalienable rights of persons accused of crime guaranteed by Section 8 of the Virginia Constitution are one thing and appellate review quite another. The latter is not a part of due process of law, appeals and writs of error with us being discretionary. *McCue's Case*, 103 Va. 870, at p. 1008.

As is well known, in England, persons accused of felony were not allowed to have counsel appear for them in the trial courts until comparatively modern times, except, perhaps, as to some question of law, the rule being changed by statute as to high treason after the Revolution of 1688 (7 Wm. III, c. 3) and as to all felonies generally in 1836 (6 & 7 Wm. IV, c. 114). Cooley's Constitutional Limitations, 8th ed., Vol. 1, pp. 698, 700, and notes. Apparently the rule was otherwise in the case of appeals of felony, counsel being then allowed. Holdworth, History of English Law, Vol. 5, p. 192, note 2, referring to Y. B. 30, 31 Ed. I (R. S.) 530 and quoting from Y. B. 9, Ed. IV, Pasch. pl. 4.

Mr. Justice Sutherland, in *Powell* v. *Alabama*, 287 U. S. 45, at p. 60, said as follows:

> "If recognition of the right of a defendant charged with a felony to have the aid of counsel depended upon the existence of a similar right at common law as it existed in England when our Constitution was adopted, there would be great difficulty in maintaining it as necessary to due process."

And further on in the same opinion, it is pointed out that in at least twelve of the original thirteen colonies [fol. 27] laws had been passed allowing persons accused of felony the right to assistance of counsel. As for the law of Virginia, the statute of August, 1734 (Chapt. VII, Sec. III, Law of Va., 8th Geo. II, Hening's Stat. at L., Vol. 4, p. 404 is cited. On examination, the paragraph of the statute cited with which we are concerned is as follows:

> "*And it is further declared*, That in all trials for capital offenses, the prisoner, upon his petition to the court, shall be allowed counsel."

Provision for counsel was again made in Chapt. LVII, Oct. 1786, 11th Com., 12 Hening's Stat. at L., p. 343. Still later, in the Code of Virginia of 1819, C. 169, Sec. 27, the law is stated in the following language:

> "When the grand jury shall have presented to the superior court of law a bill of indictment, against any person charged with treason or felony, the court shall . . . allow him counsel to assist him at his trial, if he desire it."

In 55 A. L. R. 2d 1072, there is published a very comprehensive Annotation entitled "Right of indigent defendant in criminal case to aid of state as regards new trial or appeal." In 2 L. ed. 1644 appears an even more recent Annotation entitled "Accused's right to counsel under the Federal Constitution—Supreme Court Cases." In the latter it is said, with which I agree, as follows (2 L. ed., at p. 1649):

> "Whether an indigent defendant is, as a matter due process, entitled to the assistance of counsel for the purpose of appealing from his conviction, is a question which has not yet been squarely decided by the United States Supreme Court."

However, in both of the annotations cited appears the following statement (55 A. L. R. 2d at p. 1085; 2 L. ed., at p. 1649):

[fol. 28] > " * * *. Thus, the establishment of the rule that a state must, as a matter of federal constitutional law, provide indigents with the assistance of counsel to prosecute appeals in criminal cases would appear to be no more than a logical extension of the Griffin doctrine."

Whether this view be correct or incorrect is, of course, the question in the instant case.

In *Clesson* v. *Teets* (1957), 354 U. S. 156, 1 L. ed., 2d 1253, 77 S. Ct. 1127, it was held that due process under the Federal Constitution had been denied, where, after conviction, the petitioner, who was without counsel, was not given a reasonable opportunity to personally participate in the settlement of the record, about which there

was considerable controversy. Under California law, the petitioner could appeal as of right. In *Griffin* v. *Illinois* (1956) 351 U. S. 12, 100 L. ed. 891, 76 S. Ct. 585, 55 A. L. R. 2d 1055, it was held, as a matter of federal constitutional law, that, as to the cost of a transcript, a convicted felon is entitled to state aid, where, under the state law, persons able to pay may obtain appellate review of alleged trial errors. I find no other decisions of the Supreme Court of the United States dealing with post conviction situations in state courts.

As for the rule applicable to prosecutions in the federal courts, in *Johnson* v. *United States* (1957), 352 U. S. 565, 77 S. Ct. 550, 1 L. Ed. 2d 593, it was held, purporting to follow *Johnson* v. *Zerbst*, 304 U. S. 458, 58 S. Ct. 1019, 82 L. Ed. 1461, that a Court of Appeals should appoint counsel to assist a person convicted in a District Court to obtain permission to appeal *in forma pauperis*. In the Ninth Circuit this decision has been interpreted as meaning that the Sixth Amendment to the Constitution of the United States, which is of course not applicable to state court proceedings, guarantees to persons convicted in federal district courts the right to counsel on appeal. *In re Application of Dinerstein*, 258 F. 2d 609, 611; *Anderson* v. [fol. 29] *Heinze*, 258 F. 2d 479, 481. In the Eighth Circuit the same interpretation of the *Johnson* Case seems to have been adopted. *Weber* v. *United States*, 254 F. 2d 713. In the Sixth Circuit, the year before the *Johnson Case*, an application for the appointment of an attorney on appeal was denied, it appearing that no question of law was involved. *Herrell* v. *United States*, 234 F. 2d 814. In our own Circuit, the Fourth, in the *per curiam* opinion in *Crowe* v. *United States*, 175 F. 2d 799, 801, Judges Parker, Soper and Dobie sitting, it was said as follows, this case being decided in 1949:

> "So far as appointment of counsel is concerned, the requirement of the Constitution is that the prisoner have counsel upon his trial, not when he subsequently makes a motion attacking the judgment there entered."

In *Cochran* v. *State of Kansas*, 316 U. S. 255, 62 S. Ct. 1068, 86 L. Ed. 1453, it was held that a petition for

habeas corpus reciting that state prison officials suppressed efforts to appeal in accordance with Kansas law stated a case for relief. In *Boukin v. Huff*, 131 F. 2d 865, where it was contended that the federal district court failed to aid in a proposed appeal, the point here presented was not decided, it being held that the application could be treated as an appeal taken in time. Denial of access to an attorney after conviction as constituting violation of the Fifth and Sixth Amendments to the Constitution of the United States was considered in *Thompson v. Johnston*, 160 F. 2d 374. These cases do not go the length of holding that a trial judge, on request, must, through the appointment of counsel and otherwise, secure to a convicted person an appeal.

In the decisions of the courts of last resort of the states there are very few cases dealing with this subject. 23 C. J. S. 326, 327. In *State v. Bonger* (Tenn.) 300 S. W. 2d 927, it was held that the accused has no constitutional right to be represented by a counsel on appeal. The contrary result, based on the peculiar wording of the [fol. 30] state constitution has been reached in Indiana, where convicted persons may appeal as a matter of right. *State v. Allen Circuit Court* (Ind), 153 N. E. 2d 914. In Wisconsin there is a statute providing for the appointment of counsel in the appellate court. *State v. Tahr*, 238 Wis. 589, 300 N. W. 754.

While I have seen in the reports of a federal Court of Appeal, to which an appeal is given as a matter of right, a suggestion to the effect that the appeal should be regarded as a "continuation of the prosecution", I do not consider this to be the correct view. Certainly, it is directly contrary to the opinion of Mr. Justice Harlan, in *Schick v. Bergareb*, 143 U. S. 442, 12 S. Ct. 525, 36 L. Ed. 218, who demonstrated, conclusively, I think, that the constitutional guarantees provided for the protection of persons accused of crime apply to "the court of original jurisdiction which pronounced the sentence, and not to the appellate court." In this connection attention is invited to Vowell v. State, 132 Tenn. 349, 178 S. W. 768, in which the cases from many jurisdictions are collected. In any event, this question is not an open one in this

jurisdiction. *McCue* v. *Commonwealth*, *supra*, which is, of course, binding on me.

I have, perhaps at undue length, referred to the old rule in England, the early statutes of this Commonwealth, and the present local law for the purpose of ascertaining whether this court should make the so-called "logical extension" of the rule in the *Griffin Case*. I do not find the "extension" logical or, indeed, permissible, without overturning doctrine centuries old, if not actually binding precedent, the latter being obviously beyond my powers. With us, as was held in Illinois, the proceedings in the appellate court are not a prosecution by the state, but a proceeding in error brought by the convicted person himself. Fielden v. People, 128 Ill. 595, 21 N. E. 584. Indeed, with us he is known as the "plaintiff in error." [fol. 31] In this branch of the law the great struggle and the great victory of the last three centuries has been in reference to a fair trial of persons charged with crime. In Lord Coke's day it was thought the care of the trial judge was a sufficient protection. 3 Inst. 137, being Chapter LXIII, entitled "Of Counsel Learned in Pleas of the Crowne". Serjeant Hawkins discussed this matter, saying, in part as follows (Hawk. P. C., 8th ed., Vol. 3, p. 554):

> "And if it be further considered that it is the duty of the court to be indifferent between the King and prisoner, and to see that the indictment be good in law, and the proceedings regular, and the evidence legal, and such as fully proves the point in issue, there seems no great reason to fear but that generally speaking, the innocent, for whose safety alone the law is concerned, have rather an advantage than a prejudice in having the court their only counsel."

Later, Sir William Blackstone, whose great work may safely be presumed to have greatly affected the early laws of this country, although to our credit the Virginia statute cited was even earlier, thought that the rule in England was wrong, thus a matter "worthy the interposition of the legislature." 4 Bla. Com., 349, 350. Now, as we have seen, no plea may be received by the trial judge in felony

cases until after the accused has had the advice of counsel.

With us an accused is entitled to one fair trial involving "no bending or breaking of his constitutional rights." Michie's Jurisprudence, Vol. 5, p. 368. Neither in the state or federal constitution is to be found any provision requiring counsel for a proposed application for a writ of error. In the case of mere errors committed by the trial court relief may be sought at the suit of the convicted person in the usual way. Detention under color of a void conviction, for which relief may be granted by habeas corpus, must involve an absence of a valid law the violation of which was charged, a lack of jurisdiction in the trial court of the crime charged or of the person [fol. 32] of the accused, or a failure of the trial court to accord to the accused those procedural safeguards guaranteed to him by the state and federal constitutions. The petition for habeas corpus in the instant case fails to allege any of these things.

[fol. 33]

IN THE
LAW AND EQUITY COURT OF THE
CITY OF RICHMOND

(Title Omitted)

NOTICE OF APPEAL

To: THE HONORABLE ROBERT LEWIS YOUNG, JUDGE OF THE AFORESAID COURT:

Comes now, Stuart W. Newsom, w' before was a petitioner in the said Court for a Writ of Habeas Corpus Ad Subjiciendum, which was in the decision of this Honorable Court, denied, pursuant to rendering an Order of Judgment voiding a sentence of life imprisonment, illegally imposed by the Hustings Court, Part II, of the City of Richmond, Virginia; does now respectfully move and hereby give NOTICE of his desire to appeal from the Order and judgment rendered in this case, to the Supreme Court of Appeals of Virginia.

It is prayed for, that by order of this Honorable Court, that appellant, may proceed in this case in Forma Puaperis, in accordance with the statuts providing for indigents suits; to-wit: Section 14-180 of the Code of Virginia.

Respectfully submitted,

/s/ Stewart W. Newsom
STUART W. NEWSOM,
Appellant

This is to certify that I mailed a copy of the foregoing NOTICE of Appeal to Albertis S. Harrison, Attorney General of Virginia, this 15 day of June, 1959.

/s/ Stewart W. Newsom
STUART W. NEWSOM,
Appellant

[fol. 34] IN THE
LAW AND EQUITY COURT OF THE
CITY OF RICHMOND

(Title Omitted)

ASSIGNMENT OF ERROR—Filed June 29, 1959

To: THE HONORABLE ROBERT LEWIS YOUNG, JUDGE OF THE AFORESAID COURT:

Now comes Appellant, Stuart W. Newsom, who was before your petitioner, who respectfully presented by mail, addressed to the Honorable Judge of said Court, his petition for the Writ of Habeas Corpus Ad Subjiciendu, on or about the 9th day of January A. D. 1959.

WHEREUPON, and during which time the Honorable Judge of the aforesaid, Law And Equity Court, considered, determined and returned his decision by order of judgment dated and entered on the 3rd day of June A. D. 1959, which order of judgment executed, confirmed the validity of the original illegal sentence of the Husting Court Part II, of the City of Richmond, dated 10th day of April A. D. 1953.

Your Appellant respectfully contends that this Honorable Court erred in his analogy.

Petitioner, which is now your Appellant, contended, to: wit, that he was denied Due Process of Law, and Equal Protection, when the Husting Court Part II, of the City of Richmond, denied him an appeal from its judgment, rendered and executed on the 10th day of April A. D. 1953, and in that, failing to aid sufficiently the intended appeals of the appellant—supported by certified copies, namely Exhibit "C and B", in which res ipsa loquitur.

[fol. 35] 1. The Court decision and judgment are against the law in this case.

2. The decision is contrary to the evidence, presented.

3. The Court admitted the question which was presented, appears to be a novel one, both under the Laws of this Commonwealth and under the Federal Constitution.

4. The court erred in failing to follow the rule of "stare decesis".

Appellant wishes, and with affableness, to make it plain to this Honorable Court, that he realize that he has confronted and presented to a high and outstanding Court, a very extraordinary question, and he feels that the Honorable Court, executed his decision in bona fide.

* * * * *

In this Honorable Court opinion page 1., presented Sec., 19-254 and therein the case of Ramey v. Commonwealth, 145 Va. 848, which deal with postponing of the execution of sentence of a person desiring to seek a Writ of Error * * * and to compute, this Honorable Court states, "However, the record appended to the petition fails to disclose that a request for suspension was made". This seem to be the basicty comply.

An appeals means a trial de novo (anew) in a higher court, in its broad sense, the word "appeal" means any proceeding in error by which the alleged errors committed in a TRIAL COURT are reviewed in an appellate court, and therefore, there is no second trial, therefore, the trial court had not lost its jurisdiction, if so, it would be immaterial to the trial Court whether or not, if the defendant gave NOTICE OF APPEAL, and therewith assignment of errors, or not. Therefore the case still remain in the breast of the trial court. And in this sense, the defendant is still in the jurisdiction of the Trial Court, and he is therefore entitled to an Attorney, and if in poverty, upon request, the Court is to appoint an Attorney to aid, or [fol. 36] perfect that which is therefore, provided by the legislative of this Commonwealth, which ascertained under Section 14-180, Code of Virginia, 1950, and Section 19-214.1, which remain as or now, and mandatory.

This Honorable Court, submitted in his opinion Section 19-254 Code of Virginia, 1950, and to the case of Ramey v. Commonwealth 145 Va. 848; quote in part—: "If a person sentenced by a person sentenced by a circuit or corporation court to death or confinement in the penitentiary asks for time to apply for a writ of error, the court shall postpone the execution of its sentence for such time deem proper."

This said Section doesn't state How A PERSON should ask for time to apply for a writ of error; it merely states, Ask. This could mean a number of ways, by phone, letter or telegram or what not. It doesn't say ask in or out of court, or to any member of the court.

The Order of conviction re ipsa loquitur, beyond any reasonable of doubts. Appellant made it clear that his attorney, did not represent him properly, which therefore, again show, that his spirt to the accused was that of lackadasically, which point out, why should he ask for an appeal, or made ground for an appeal, when all along he had no spirit, to stand or to maintain toward the Court a respectful attitude, not for the sake of the temporary incumbent of the judicial office, but for the maintenance of its supreme importance. The said order of conviction also point out that the defendant executed what little knowledge he had to show the court that he desired an appeal, and that a great negligence of duty had been conceived.

Your appellant contends that your Honor's decision, necessitating this appeal, it is further depriving this prisoner of due process of law, as well as depriving him [fol. 37] of Equal Protection, as well as depriving him of his liberty unlawfully. Your appellant contends that it is both unlawfully and unconstitutional according to the law of the land, whereas, the due process clause requires "that state action, whether through one agency or another, shall be consistent with the fundamental principles of liberty and justice which lie at the base of all our civil and political institutions. Herbert v. Louisiana, 272 U.S. 312. 316, 47 S.Ct. 103, 104, 71 L.Ed. 270, 48 A.L.R. 1102.

A denial of Equal Protection of the laws is prohibited by the Fourteent Amendment to the Federal Constitution; a guaranty that no person or class of persons shall be denied the same protection of the laws which is enjoyed by other persons . . . Ballentine 2d ed.

WHEREFORE, your appellant prays that this Honorable Court to cause record in this case together with this

Court's permission to Appeal, the aforesaid, to the Supreme Court of Appeals of Virginia

In duty bound I will forever pray, etc. . . .

Respectfully submitted

/s/ Stewart W. Newsom
STUART W. NEWSOM,
Appellant

[fol. 38] • • •
[fol. 39] • • •
[fol. 40] IN THE
SUPREME COURT OF APPEALS

ORDER REFUSING PETITION FOR WRIT OF ERROR—
Oct. 13, 1959

The petition of Stuart W. Newsom for a writ of error to a judgment rendered by the Law and Equity Court of the City of Richmond on the 3rd day of June, 1959, in a certain proceeding then therein depending, wherein the said petitioner was plaintiff and W. Frank Smyth, Jr., Superintendent of the Virginia State Penitentiary, was defendant, having been maturely considered and a transcript of the record of the judgment aforesaid seen and inspected, the court being of opinion that the said judgment is plainly right, doth reject said petition, and refuse said writ of error, the effect of which is to affirm the judgment of the said Law and Equity Court.

Mr. Justice Miller took no part in the consideration or decision in this case.

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[fol. 41] • • •

• • • •

[fol. 42] Clerk's Certificate to foregoing Transcript
Omitted in Printing.

[fol. 43] SUPREME COURT OF THE UNITED STATES

(Title Omitted)

ORDER GRANTING MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS AND GRANTING PETITION FOR WRIT OF CERTIORARI—May 31, 1960.

ON PETITION FOR WRIT OF CERTIORARI to the Supreme Court of Appeals of the Commonwealth of Virginia.

ON CONSIDERATION of the motion for leave to proceed herein *in forma pauperis* and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed *in forma pauperis* be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted. The case is transferred to the appellate docket as No. 974.

May 31, 1960

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